



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUN 24 2013** Office: LONDON

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission was denied by the District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The record shows that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking readmission within 10 years of his last departure from the United States. The applicant sought a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

The record of proceedings reflects that the applicant entered the United States on March 10, 2001, at the Miami International Airport pursuant to the Visa Waiver Program. The applicant was given permission to remain in the United States until June 9, 2001. On June 28, 2001, an I-129 Petition for Nonimmigrant Worker was filed naming the applicant as the beneficiary. The Form I-129 was approved on July 25, 2001, erroneously granting the applicant nonimmigrant L-1 status. *See* 8 C.F.R. § 248.2(a)(6) (providing that any alien admitted as a Visa Waiver Program visitor is ineligible to change their nonimmigrant status). On July 9, 2002, the applicant filed for an extension of his L-1 visa, which was denied on February 17, 2006. The applicant was removed from the United States on March 28, 2006 under the expedited removal provisions set forth in sections 217(b) and 235(b)(1) of the Act. On August 17, 2011, the director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the exercise of discretion as no purpose would be served in addressing the application of an alien whose Form I-601 was denied based on the evidence in the record.

The record establishes that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an applicant seeking readmission after previously being removed.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

On appeal, counsel contends that the Form I-212 should have been independently evaluated and not denied based upon the Form I-601 waiver denial. Counsel states that the director failed to properly weigh the equities and that he abused his discretion in denying the applicant's Form I-212.

The AAO notes that it has dismissed the applicant's appeal of the Form I-601 decision in a separate decision. Thus, as the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act, adjudication of the Form I-212 serves no purpose. An application for permission to reapply for admission may be denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). Further, chapter 43.2(d) of the Adjudicator's Field Manual states:

If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

As the applicant's Form I-601 has been denied, no purpose would be served in adjudicating the applicant's Form I-212. Accordingly, the appeal will be dismissed and the Form I-212 shall be denied.

ORDER: The appeal is dismissed.